



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 1 6 2009

Marilyn Donlin

Warren, MI 48088

RE: MUR 6198

Dear Ms. Donlin:

The Federal Election Commission reviewed the allegations in your complaint dated June 18, 2009, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe the Committee to Elect Michael Switalski State Senator and JoAnn Matiyow, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A), 433(a) and 434, and that Switalski for Congress and Michael Norbert Switalski, in his official capacity as treasurer, violated 2 U.S.C. § 441(a)(f). Also on this date, the Commission decided to dismiss, as a matter of prosecutorial discretion, any allegation that Switalski for Congress and Michael Norbert Switalski, in his official capacity as treasurer, violated 2 U.S.C. § 434. Accordingly, on December 10, 2009, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Switalski for Congress, and Michael MUR: 6198
Norbert Switalski, in his official capacity
as treasurer
Committee to Elect Michael Switalski
State Senator, and JoAnn Matiyow, in
her official capacity as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Marilyn Donlin. *See*

2 U.S.C. § 437(g)(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Michael Switalski is a member of the Michigan Senate from the 10th Senate District.

Mr. Switalski is currently serving his second and final term, due to the term limits of the office.

For more than a decade, his state campaign committee, the Committee to Elect Michael Switalski State Senator, has held an annual "Michael O'Switalski Irish Party" as both a fundraiser and a thank-you to the constituents of the district.

Mr. Switalski is also currently seeking the Democratic Party nomination for the U.S. House of Representatives, 12th Congressional District of Michigan. According to Switalski, his Federal campaign committee, Switalski for Congress, was created April 6, 2009, and accepted its first contributions on that date. The Federal committee's Statement of Organization was filed April 16, 2009. The Federal committee has filed two reports with the Federal Election Commission, including the July 2009 and October 2009 Quarterly Reports.

1 Mr. Switalski announced his Federal candidacy at the March 21, 2009 Irish Party, funded
2 by the state committee. A February 23, 2009 invitation to the Irish Party included several
3 paragraphs describing the food, drink, and entertainment that would be provided, and
4 additionally stated, "I intend to announce what my future plans are that evening." Complaint at 3
5 and Exhibit 5. Additionally, an article running in the Macomb Daily newspaper on March 22,
6 2009 indicated that Switalski would be a Federal candidate, and stated, "[b]y the time you read
7 this, Switalski will have made his announcement Saturday night at his annual Irish-themed
8 party." At the event, which lasted from 6:00pm to 11:00pm, Mr. Switalski took the stage several
9 times to make various announcements. At approximately 8:00pm, Mr. Switalski took the stage
10 to announce his candidacy: "Tonight, I am announcing my candidacy for the U.S. House of
11 Representatives 12th Congressional District. I am running because I believe I can do a better job
12 for the people of this District." Exhibit 1 and Response at 1.

13 As the Irish Party is an annual fundraiser for the state committee, it was paid for by the
14 state committee.¹ The state committee has not yet filed its 2009 disclosure report with the
15 Michigan Bureau of Elections, so the exact amount of money spent on the event has not been
16 disclosed to the public. However, Mr. Switalski's response states that the event was no more
17 elaborate than it has been in previous years, and that he would have thrown the same event even
18 if he had not been announcing his Federal candidacy. Indeed, the event appears to be similar to
19 Mr. Switalski's 2007 Irish Party: both served beer and food from Amore's Family Restaurant,
20 National Coney Island, and Passport Pizza. According to Complainant's itemized calculations,
21 based on the state committee's disclosure forms, the 2007 Irish Party cost \$3,744.20.
22 Complainant alleges that this year's event must have been more expensive than the 2007 event

¹ Michigan law prohibits corporate and labor union contributions, and limits individual contributions for state senate candidates to \$1,000. Michigan Campaign Finance Act §§ 169.252(1)(b), 169.254, 169.255.

1 because it featured more food and beer options, such as pasta from Villa Penna, hummus from
2 Jalia's Market, and Guinness imported beer. In his response, Mr. Switalski claims the 2009
3 event cost about the same as the 2007 event, due to cutbacks on other items. Specifically, he
4 held the event at a smaller venue (the VFW Hall instead of Imperial House) and played music on
5 his stereo instead of hiring a band.

6 Mr. Switalski also argues that his announcement took only thirty seconds of the five-hour
7 evening, and that he did not hang any signs, ask for volunteers, or accept contributions for his
8 Federal campaign. Switalski for Congress did not accept any contributions either on the day of
9 the event or in the days immediately following. At some point, Switalski for Congress created a
10 website and posted a press release about the announcement.²

11 B. Legal Analysis

12 It does not appear that the state committee made, or that Switalski for Congress accepted,
13 in-kind contributions in excess of the Act's limits. Any portion of the State committee's
14 expenses in connection with the Irish Party that are potentially attributable to the announcement
15 of Switalski's Federal candidacy would likely be *de minimis*. Further, it does not appear that the
16 Committee to Elect Michael Switalski State Senator violated the Act by failing to register with
17 the Commission as a political committee.

18 1. Alleged In-Kind Contribution

19 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
20 value made by any person for the purpose of influencing any election for Federal office.

21 2 U.S.C. § 431(8)(A)(i). Commission regulations define "anything of value" to include in-kind

² Switalski for Congress was not formed until April 6, 2009, and the press release is dated March 21, 2009. The press release was posted on the Federal committee's website, a printout of which was provided in the complaint, and the website states that it is paid for by the Federal committee. Mickey Switalski for Congress, at <http://switalski4congress.com/index.htm> (last visited Nov. 30, 2009).

1 contributions: the provision of goods or services without charge or at a charge that is less than
2 the usual and normal charge. 11 C.F.R. § 100.52(d)(1). The Act limits the contributions a
3 person can make, and a candidate can receive, with respect to a Federal election. These
4 contributions cannot, in aggregate, exceed \$2,400. 2 U.S.C. § 441a(a)(1)(A).

5 While the portion of the event at which the federal candidacy was announced is related to
6 a federal election, only a small portion of the event's expenses could potentially be attributed to
7 the federal candidacy. Respondent asserts that the annual State committee event would have
8 taken place with the exact same level of expenditures regardless of whether Mr. Switalski
9 announced his Federal candidacy. Mr. Switalski asserts that he did not hang signs, ask for
10 volunteers, or accept contributions to his Federal campaign that evening, nor is there any
11 information to the contrary. Furthermore, there is no information which disputes the assertion
12 that the announcement of Federal candidacy accounted for thirty seconds of the five-hour event.

13 While Mr. Switalski's response did not make any specific representation as to the amount
14 spent on the 2009 Irish Party, he does assert that its costs were approximately the same as the
15 2007 Irish Party, which, according to the State committee's 2007 disclosure report, appear to be
16 \$3,744.20. Given what is known about the Irish Party content and program – particularly the
17 amount of time spent on the announcement compared to the length of the event – any expenses
18 that may have been related to the Federal candidacy announcement are likely *de minimis*.

19 Accordingly, the Commission finds no reason to believe that the Committee to Elect
20 Michael Switalski State Senator and JoAnn Matiyow, in her official capacity as treasurer,
21 violated 2 U.S.C. § 441a(a)(1)(A) by making in-kind contributions in excess of the Act's limits.
22 The Commission also finds no reason to believe that Switalski for Congress and Michael

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Switalski, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by accepting in-kind contributions in excess of the Act's limits.

Because of the small amount at issue, the Commission dismisses the allegation that Switalski for Congress violated 2 U.S.C. § 434 by receiving an in-kind contribution from the State committee to the Federal committee in connection with the Irish Party, and whether the Federal committee failed to report this contribution.

2. Political Committee Status

When a committee or association receives contributions or makes expenditures in excess of \$1,000 during a calendar year, it becomes a political committee under the Act and must register and report with the Commission. 2 U.S.C. §§ 431(4)(A), 433(a), 434. The Supreme Court has held that only organizations whose major purpose is Federal campaign activity (i.e., the nomination or election of Federal candidates) can be considered political committees under the Act. *See, e.g. Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986); Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597, 5601 (2007).

Because there is no information that it received any contributions, the Committee to Elect Michael Switalski State Senator could only qualify as a political committee under the Act if: (1) the Irish Party constituted an expenditure of at least \$1,000 for the purpose of influencing a Federal election; and (2) the committee's major purpose is Federal campaign activity. As discussed above, there is no evidence that any potential Federal portion of the expenditures for the Irish Party reached the \$1,000 threshold. Furthermore, even if there was a Federal expenditure of \$1,000, the state committee's major purpose was not Federal campaign activity. On the contrary, the committee was formed for the purpose of electing Michael Switalski to the

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- 1 office of State Senator, and has spent several hundred thousand dollars for that purpose.
- 2 Accordingly, the Commission finds no reason to believe that the Committee to Elect Michael
- 3 Switalski State Senator and JoAnn Matiyow, in her official capacity as treasurer, violated
- 4 2 U.S.C. §§ 433(a) and 434 by failing to register and report to the Commission as a political
- 5 committee.

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